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Todd Harrison, d/b/a L & T Painting Company and International Brotherhood of Painters and Allied Trades, AFL-CIO, Local No. 203. Case 17-CA-18315

June 6, 1996

DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND FOX

Upon a charge filed by the Union on November 2, 1995, the General Counsel of the National Labor Relations Board issued an amended complaint on April 19, 1996, against Todd Harrison, d/b/a L & T Painting Company, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and amended complaint, the Respondent failed to file an answer.¹

On May 10, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On May 14, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the amended complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the amended complaint will be considered admitted.²

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

¹ The Respondent also failed to file an answer to the original complaint issued March 15, 1996.

² Although no further reminder or warning of the consequences of failing to file an answer was sent or given to the Respondent, this does not warrant denial of the motion. See, e.g., *Superior Industries*, 289 NLRB 834, 835 fn. 13 (1988).

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent has been owned by Todd Harrison, a sole proprietorship, doing business as L & T Painting Company, with an office and place of business in Springfield, Missouri, and has been engaged in business as a painting contractor in the construction industry. During the 12-month period ending December 31, 1995, the Respondent, in conducting its business operations, provided services valued in excess of \$50,000 for Ben F. Blanton Construction, Inc. (Blanton), an enterprise within the State of Missouri. At all material times, Blanton, with an office and place of business in St. Peters, Missouri, has been engaged in business as a general contractor in the construction industry. During the 12-month period ending December 31, 1995, Blanton, in conducting its business operations, performed services valued in excess of \$50,000 in states other than the State of Missouri. We find that Blanton and the Respondent are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All journeymen, apprentices and helpers engaged in painting, wall coverings, drywall taping and finishing, plasterers, sandblasters, equipment operators, shopmen and truck driver employees, excluding all estimators, office, clerical, professional, guards and supervisors as defined in the National Labor Relations Act, as amended, and all other employees.

About 1990, the Respondent, an employer engaged in the construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the unit without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act. Such recognition has been embodied in successive collective-bargaining agreements, including the most recent agreement that is effective from April 29, 1994, to March 31, 1997. At all material times, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the unit.

Since about May 1, 1995, and continuing to date, the Respondent has repudiated its collective-bargaining relationship with the Union by failing and refusing to

recognize the Union as the collective-bargaining representative of its unit employees, failing and refusing to pay its unit employees the contractual wage rates, and failing and refusing to make the contractually required fringe benefit contributions on behalf of its unit employees. The Respondent engaged in this conduct without the Union's consent. These terms and conditions of employment are mandatory subjects for the purpose of collective bargaining.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the limited exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent repudiated its collective-bargaining relationship with the Union by failing and refusing to recognize the Union as the limited collective-bargaining representative of the unit employees, we shall order it to do so.

In addition, having found that the Respondent violated Section 8(a)(5) and (1) by unilaterally failing and refusing to pay its unit employees the contractual wage rates since about May 1, 1995, we shall order the Respondent to make the unit employees whole for any loss of earnings attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Finally, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required fringe benefits contributions on behalf of its unit employees since about May 1, 1995, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth

in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.³

ORDER

The National Labor Relations Board orders that the Respondent, Todd Harrison, d/b/a L & T Painting Company, Springfield, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Repudiating its collective-bargaining relationship with International Brotherhood of Painters and Allied Trades, AFL-CIO, Local No. 203 by failing or refusing to recognize the Union as the limited exclusive collective-bargaining representative of its unit employees, failing or refusing to pay its unit employees the contractual wage rates, or failing or refusing to make the contractually-required fringe benefit contributions on behalf of its unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize the Union as the limited exclusive collective-bargaining representative of the following unit employees:

All journeymen, apprentices and helpers engaged in painting, wall coverings, drywall taping and finishing, plasterers, sandblasters, equipment operators, shopmen and truck driver employees, excluding all estimators, office, clerical, professional, guards and supervisors as defined in the National Labor Relations Act, as amended, and all other employees.

(b) Comply with the 1994-1997 collective-bargaining agreement, pay its unit employees the contractual wage rates it has failed to pay since May 1, 1995, make all contractually required fringe benefit contributions it has failed to make since May 1, 1995, and make its unit employees whole, with interest, for any expenses attributable to its failure to make the required contributions, in the manner set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

³ To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

(d) Within 14 days after service by the Region, post at its facility in Springfield, Missouri, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 2, 1995.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 6, 1996

Margaret A. Browning,	Member
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Charles I. Cohen,	Member
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Sarah M. Fox,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

⁴If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT repudiate our collective-bargaining relationship with International Brotherhood of Painters and Allied Trades, AFL-CIO, Local No. 203 by failing or refusing to recognize the Union as the limited exclusive collective-bargaining representative of our unit employees, failing or refusing to pay our unit employees the contractual wage rates, or failing or refusing to make the contractually required fringe benefit contributions on behalf of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize the Union as the limited exclusive collective-bargaining representative of the following unit employees:

All journeymen, apprentices and helpers engaged in painting, wall coverings, drywall taping and finishing, plasterers, sandblasters, equipment operators, shopmen and truck driver employees, excluding all estimators, office, clerical, professional, guards and supervisors as defined in the National Labor Relations Act, as amended, and all other employees.

WE WILL comply with the 1994-1997 collective-bargaining agreement, pay our unit employees the contractual wage rates we have failed to pay since May 1, 1995, WE WILL make all contractually required fringe benefit contributions that we have failed to make since May 1, 1995, and WE WILL make our unit employees whole, with interest, for any expenses attributable to our failure to make the required contributions, in the manner set forth in a decision of the National Labor Relations Board.

TODD HARRISON, d/b/a L & T PAINTING
COMPANY